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The European Economic Interest Group (EEIG): A New European Business Entity

Daniel T. Murphy*

ABSTRACT

This Article analyzes the European Communities Regulation establishing the European Economic Interest Group (EEIG), a commercial entity whose purpose is to facilitate the economic interests of its members. Dean Murphy emphasizes that the Regulation establishes the EEIG as a Community-wide legal entity but leaves regulation of many aspects of the EEIG's status and operation to the laws of the Member States. The Regulation institutionalizes and encourages cross-border business cooperation while allowing flexibility. Dean Murphy analyzes the Regulation's provisions for formation, operation, and termination of the EEIG. He concludes that the EEIG will likely prove to be a convenient and popular means for European entities and individuals to conduct business in the EC.

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I. INTRODUCTION

The European Communities (EC) have long sought to adopt legislation providing for the creation and operation of EC law-based commercial entities.¹ A single set of Community rules, or at least twelve national

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1. See, e.g., *Proposal for a Council Regulation on the Statute for a European Company*, 32 O.J. EUR. COMM. (No. C 263) 41 (1989) (Commission); *Amended Proposal for a Fifth Directive Founded on Article 54(3)(g) of the EEC Treaty Concerning the*

sets of substantively similar national rules, would govern the formation and operation of such legal entities.² Since such entities would not be subject to differing regulations among the Member States, they could operate transnationally more efficiently than their purely national law-regulated cousins. These entities would thus both facilitate the attainment of the EC-wide single internal market and be in a position to exploit it.

The adoption in July 1985 of the Regulation on the European Economic Interest Grouping³ (the Regulation) brought the Council of the European Communities its first success, albeit a modest one, in achieving this goal. This Regulation establishes a new form of commercial legal entity within the EC and sets forth the rules for its formation and operation. European Economic Interest Groupings (EEIGs) may be formed and operated under the Regulation after July 1, 1989.⁴

The law creating the EEIG entity is an EC regulation. Consequently the legislation is directly applicable within the Member States.⁵ The legislation is both EC law and a statutory law binding within each of the

Structure of Public Limited Companies and the Powers and Obligations of Their Organs, 26 O.J. EUR. COMM. (No. C 240) 2 (1983) (Commission); *Amended Proposal for a Council Regulation on the Statute for European Companies*, 8 BULL. E.C. 9 (Supp. 4 1975); *Proposal for a Regulation on the Council on the European Cooperation Grouping (ECG)*, 17 O.J. EUR. COMM. (No. C 14) 30 (1974) (Commission) [hereinafter *Original Proposal*]; *Proposal for a Fifth Directive to Coordinate the Safeguards Which, for the Protection of the Interests of Members and Others, are Required by Member States of Companies Within the Meaning of the Second Paragraph of Article 58 of the EEC Treaty, as Regards the Structure of Sociétés Anonymes and the Powers and Obligations of Their Organs*, 15 O.J. EUR. COMM. (No. C 131) 49 (1972) (Commission), reprinted in 26 O.J. EUR. COMM. (No. C 240) 2 (1983); *Proposal for a Draft Statute for European Companies*, 13 O.J. EUR. COMM. (No. C 124) 1 (1970) (Commission).

2. If the European Communities' (EC) rules were set forth in regulations, they would constitute one set of precepts becoming directly part of the national law of the Member States, superseding any inconsistent national laws. If EC rules were promulgated by directives, the Member States would be obligated to enact national legislation containing the substance of the EC directive. Under the regulation approach, there would be only one effective set of rules at the EC level and within the Member States; under the directive approach at best there would be 12 sets of, ideally, consistent national laws. See generally D. LASOK & J. BRIDGE, *LAW AND INSTITUTIONS OF THE EUROPEAN COMMUNITIES* 113-26 (4th ed. 1987).

3. *Council Regulation on the European Economic Interest Grouping (EEC) No. 2137/85*, 28 O.J. EUR. COMM. (No. L 199) 1 (1985) [hereinafter *Regulation*]; 20 BULL. E.C. 1 (Supp. 3 1987); see Appendix.

4. *Regulation*, supra note 3, art. 43.

5. *Regulation*, supra note 3; 28 O.J. EUR. COMM. (no. L. 199), at 9.

twelve Member States as part of its national law.⁶ The EEIG thus has "dual citizenship." As a result, in addition to the traditional forms of doing business available under the national laws of the Member States, such as partnerships and limited liability companies, a new European entity now exists.

While the EEIG has the distinction of being the first commercial entity created by Community legislation, it is only partially formed by Community rules. The Regulation leaves many essential aspects of the EEIG's legal status and operation to national legislation.⁷ Moreover, the Regulation specifically sanctions differing national law provisions on many important points regarding the EEIG's operation.⁸ Consequently, the Regulation does not really create a transnational entity governed by one set of rules. The structure and some specifics will be uniform throughout the Community, but each Member State may develop its own rules regarding other aspects, and these rules can vary widely among the Member States. This gives rise to some inefficiencies and uncertainties as well as to some serious conflict of laws issues.⁹

II. GENERAL CHARACTERISTICS OF THE EEIG

The Regulation patterns the EEIG on a French business form, the Groupement d'intérêt économique (GIE), which has been well received in France¹⁰ since it was introduced into French law in 1967.¹¹

The EEIG concept is not new to the EC. Like other EC initiatives in the corporate law area,¹² the European Commission initially proposed the EEIG in the early 1970s;¹³ the concept languished, however, through the 1970s and early 1980s. Work on the Original Proposal intensified

6. See *supra* note 2; Van Gend en Loos v. Nederlandse Tariefcommissie, 1963 E.C.R. 1, [1963] 2 Common Mkt. L.R. 105; D. LASOK & J. BRIDGE, *supra* note 2, at 300-16.

7. See, e.g., *infra* notes 41-42, 71-76 and accompanying text. The Preamble to the Regulation acknowledges that states are free to adopt laws and regulations not in conflict with the scope or object of the Regulation. *Regulation, supra* note 3, preamble, para. 22.

8. See, e.g., *infra* note 40 and accompanying text.

9. See, e.g., *infra* notes 71-75 and accompanying text.

10. See J. LE GALL, FRENCH COMPANY LAW 28-36 (1974). As of June 1985 over 9000 GIEs were registered. Most of these are small or medium-sized enterprises. Airbus Industries is a notable large scale venture operated as a GIE. Commission of the European Communities, Press Release No. IP (85) 292, at 1 & n.2 (June 27, 1985) [hereinafter Press Release].

11. Ordonnance No. 67-281 du 23 Sept. 1967, J.O. 28 Sept., at 9537, 1967 D.S.L. 361 (Fr.).

12. See *supra* note 1.

13. *Original Proposal, supra* note 1.

after 1983 due to a concentrated emphasis by the Commission on measures intended to encourage cooperation between companies of differing Member States, thereby increasing the EC's competitiveness.¹⁴

The EEIG is intended to be a transnational entity through which its members can cooperate and take joint action for their mutual advantage. It resembles a partnership or a joint venture but is more structured than either. Moreover, some of the Regulation's provisions are quite inconsistent with the common law understanding of either. Contractual cooperation in the form of a joint venture of course remains possible among the other legal entities existing under national law. The advantage that the EEIG provides, and indeed the gap among the national laws that it fills, is the institutionalization of this contractual flexibility. National law has created numerous commercial entities subject to fairly rigid rules. These entities were able to achieve a certain amount of flexibility through contractual cooperation with each other. The EEIG takes that previously available contractual cooperation one step further. The Regulation gives the contractual arrangement the status of a separate legal entity, the EEIG, and protects it as such.¹⁵ The EEIG not only protects and en-

14. The immediate predecessor of the EEIG, the European Cooperation Grouping, was the subject of the Original Proposal the Commission put forth in February 1974. The Economic and Social Committee of the Community approved the Original Proposal a year later, *avis sur une proposition de règlement (CEE) du Conseil relatif à la l'institution d'un groupement européen de coopération (GEC)* 18 O.J. EUR. COMM. (No. C 108) 46 (1975), as did the Legal Affairs Committee of the European Parliament, *Report on the Proposal from the Commission of the European Communities to the Council (doc. 340/73) for a Regulation on the European Cooperative Grouping (ECG)*, 1976-1977 EUR. PARL. DOC. (No. 519/76) (Jan. 21, 1977) [hereinafter *Legal Affairs Report*]. The Commission redrafted the proposed regulation in view of the comments of the Parliament and resubmitted it to the Council in 1978. *Amended Proposal for a Council Regulation (EEC) on the European Cooperation Grouping (ECG)*, 21 O.J. EUR. COMM. (No. C 103) 4 (1978) [hereinafter *Amended Proposal*]. Active review of the Amended Proposal did not take place for several years. The Commission and the Council's attentions were focused on other corporate proposals such as the Draft Statute on the European Company and several of the company law directives. For the Council's answers to questions from Parliament regarding progress on the Amended Proposal, see 22 O.J. EUR. COMM. (No. C 15) 10 (1979); 25 O.J. EUR. COMM. (No. C 30) 5 (1982) (Response to Written Question No. 1050/81). Work on the Regulation creating the EEIG greatly intensified in late 1983 as part of the Commission's effort to increase the competitiveness of EC-based industries by encouraging cooperation between companies. Press Release, *supra* note 10, at 1. The Regulation was approved July 25, 1985. *Regulation, supra* note 3.

15. For example, the partnership and joint venture existing under United Kingdom law are largely contractual, but they are not legal persons. The nearest national law relative to the EEIG, the GIE, was established in French law to fill the gap in the law

courages cooperation among national entities, but it also directly encourages cross-border cooperation.¹⁶ By lifting some of the legal barriers to cooperation caused by the national rules governing partnerships and other forms of doing business, the EEIG may also lift some of the fiscal and psychological barriers, thereby encouraging the single market.¹⁷

The Regulation clearly carries forward this concept of flexibility and cooperation with other entities.¹⁸ Article 3(1) of the Regulation states the purposes for which an EEIG may be formed:

The purpose of [an EEIG] shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself.

Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities.¹⁹

Although broadly stated, this purpose clause places definite parameters on the operation of an EEIG. First, the EEIG's activities must be related to the economic activities of its members; second, the EEIG's activities must not be more than ancillary to the economic activities of its members. The Council has highlighted these restrictions on the EEIG's activities. In explaining the characteristics of the EEIG in the Preamble to the Regulation, the Council contrasts the EEIG with a firm or company. While a firm pursues its own purposes, the EEIG merely facilitates the development of the members' economic activities, enabling them to improve their own results.²⁰

The most likely activities permitted among members of an EEIG would include research and development activities, joint buying, selling, or manufacturing activities, or the formation of consortiums to bid on projects and manage the performance of the resulting contracts.²¹ Cer-

not filled by other business entities, principally the Association, which forbids profit-making on the one hand, and the Société, which requires a profit-making goal on the other. Like the EEIG, the GIE encourages link-ups and is a recognized legal form. See generally *Legal Affairs Report*, *supra* note 14, at 30-32 (Annex); Press Release, *supra* note 10, at 1.

16. See *infra* notes 30-33 and accompanying text.

17. See Press Release, *supra* note 10.

18. See *Introduction to the Regulation*, 20 BULL. E.C. 7 (Supp. 3 1987) [hereinafter *Introduction*].

19. *Regulation*, *supra* note 3, art. 3(1).

20. *Id.* preamble, para. 9.

21. See Israel, *The EEIG—A Major Step Forward for Community Law*, 9 COMPANY LAW 14, 15 (1986); Barnard & Earle, *Overview of the EEC Legislative Program in the Field of Company Law*, in PRACTISING LAW INSTITUTE, SERIES NO. 493, 1992, THE CHANGING LEGAL LANDSCAPE FOR DOING BUSINESS IN EUROPE 130 (1989).

tain support services for members, such as accounting or technical assistance, would also likely fit within permitted activities because they would be related and ancillary to members' economic activities. But, unless the scope of these services is narrowly confined, article 3(2)(a) of the Regulation may prohibit them. Article 3(2)(a) prevents an EEIG from exercising, directly or indirectly, the power of management or supervision over members' activities in fields such as personnel, finance, and investment.²² The rationale seems to be that if an EEIG took on such functions for its members, its operation would become essential to the vitality of the members, and thus not ancillary.²³ This determination that the EEIG remain at all times subordinate, and not essential, to the members also explains the provisions in the Regulation that the EEIG not own shares in its members²⁴ and that it remain relatively small, employing less than 500 persons.²⁵

An EEIG may make a profit. Such profits are deemed profits of the members to be apportioned according to the contract, or divided equally

22. *Regulation, supra* note 2, art. 3(2)(a).

23. This interpretation seems clear from the language of the Regulation itself. After articulating in article 3(1) the purposes for which an EEIG may be formed, the Regulation states the exclusions from permitted activity. Article 3(2)'s listing of these exclusions begins "Consequently . . . [an EEIG] may not: (a) exercise, directly or indirectly, a power of management or supervision over its members' own activities . . . in particular in the fields of personnel, finance and investment . . ." *Id.* art. 3(2)(a). Use of the word "consequently" implies that these exclusions follow from the requirement that the EEIG's activities be ancillary to the economic activities of the members.

The EEIG is probably not available to professionals as a means of practicing their profession in a cross-border context. An entity such as an EEIG or a partnership might be prohibited from engaging in the practice of the profession by the ethical or other professional regulatory rules of the Member States. It is not the intent of the Regulation to supersede such rules. Israel, *supra* note 21, at 16. Also, the purpose of the EEIG must be ancillary to the economic activities of the members. Practicing a profession through an EEIG would mean that the EEIG was engaged on a sustained basis in the same economic activity as its members. The Preamble explicitly addresses this point. It states that the EEIG's activities may not replace those of the members, so that the EEIG "may not itself, with regard to third parties, practise a profession, the concept of economic activities being interpreted in the widest sense." *Id.* preamble, para. 9. Nonetheless, at least one British law firm has established an EEIG with lawyers or firms in other EC Member States, apparently for the purpose of building a EC-wide practice. *International Lawyer*, Times (London), July 18, 1989, at 31, col 1. Employees of the EEIG are probably not practicing law on behalf of the EEIG, but providing support for the practitioner members.

24. *Regulation, supra* note 3, art. 3(2)(b).

25. This limitation on the number of persons an EEIG may employ also removes the EEIG from the German "worker participation" rules, which generally apply to businesses with more than 500 employees. Israel, *supra* note 21, at 15.

if there is no contract provision regarding profit sharing.²⁶

Membership in the EEIG is widely available to persons engaged in a business or profession within the EC. Article 4(1)(a) of the Regulation makes membership in an EEIG available to companies or firms as defined in the Treaty of Rome²⁷ that have their registered or statutory office and central administration in a Member State, and to natural persons carrying on industrial, commercial, craft, or agricultural activity, or providing professional or other services within the EC.²⁸ Member States may limit the number of members in an EEIG to twenty, and prohibit, on grounds of public interest, participation by certain classes of persons.²⁹

While all EEIG members must be nationals of a Member State, the Regulation assures the EEIG's transnational character by requiring diversity of nationality among the EEIG members. All EEIG members cannot be of the same Member State.³⁰ The nationality test used for this diversity determination is the functional one from the civil law. For individuals, the determination is based on the state of principal business or professional activity. For companies or firms, it is the state of central administration.³¹ Although the list of persons qualifying for membership in an EEIG as stated in article 4(1)(a) includes companies having both their registered offices and central administration within the EC, the diversity test of article 4(2) is based solely on central administration.³² This diversity test is a realistic one assuring the EEIG a transnational character. Registration, like incorporation, is a formal, legal process, and the state in which it takes place may be unrelated to the functional administration of the company. Hence diversity among states of registration would not sufficiently assure the transnational character of the venture.³³

26. *Regulation, supra* note 3, art. 21(1).

27. The Treaty of Rome Establishing the European Economic Community, Mar. 25, 1967, art. 58, 298 U.N.T.S. 11.

28. *Regulation, supra* note 3, art. 4(1)(a), (b).

29. *Id.* art. 4(3), (4).

30. *Id.* art. 4(2).

31. *Id.*

32. *Id.* art. 4(2)(a). United States corporations cannot become members of an EEIG, but their EC-based subsidiaries can. A United States incorporated corporation based within and having its central administration within the EC would meet the diversity test of article 4(2). *Id.* art. 4(2). It would not, however, meet the threshold test of article 4(1), which provides that membership in an EEIG is available only to corporations having both their registered or statutory office and their central administration within the EC. *Id.* art. 4(1). A subsidiary of a United States parent that is incorporated and has its central administration in an EC country would qualify as a member in an EEIG.

33. Members of the EEIG can all have the same state of registration within the EC

III. FORMATION AND OPERATION OF THE EEIG

Formation of an EEIG is a simple matter. There are only two "statutory" requirements for its creation and operation—the execution of a contract among the members, and the registration of the EEIG in the registry of the state in which its official address, as stated in the contract, is located.³⁴ The contract is both a constitutive document and an operational one. The contract, molded to the particular needs of its members and the venture, achieves the flexible nature of the EEIG.

The Regulation's other mandatory contract provisions are fairly straightforward: the name of the EEIG; recitation of the members' objects (purposes) for forming the EEIG; the identity and address of the members; and the EEIG's duration, unless it is indefinite. Scattered throughout the Regulation are numerous optional provisions that the members may include in the contract.³⁵ The Regulation does not state that the mandatory and listed optional clauses are the only allowable provisions. Thus, there appears to be no prohibition against including in the contract clauses not referred to in the Regulation. Indeed, their allowance is consistent with the contractual nature of the entity.³⁶

Registration is the act conferring legal existence on the EEIG. Registration must take place in the registry of the state of the EEIG's official address, as named in the contract.³⁷ Article 1(2) states the consequence of registration: the EEIG has "capacity, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued."³⁸

Curiously, the sections immediately following article 1 blur the status or legal capacity of the EEIG. Article 1(3) states that the Member States shall determine whether the EEIG has legal personality.³⁹ Thus, although article 1(2) provides the EEIG with the right to perform a wide range of legal acts as an entity, including presumably the right to hold

at the outset of the venture, or at any time during its life. But diversity of state of central administration as required by article 4(2) must continually exist. If a member moved its state of central administration so that this diversity were destroyed (moved it to the same state as that of the other members or outside the EC), the venture would cease to qualify as an EEIG, and its affairs would have to be wound up. *Id.* art. 31(3).

34. *Id.* arts. 1, 5, 6.

35. *Id.* art. 5.

36. *See, e.g., infra* notes 52-53, 91 and accompanying text. The validity and interpretation of such clauses in all likelihood, however, would be governed by the law of the state of the official address.

37. *Regulation, supra* note 3, art. 6.

38. *Id.* art. 1(2).

39. *Id.* art. 1(3).

and transfer title to real property, maintain bank accounts, and transfer money, article 1(3) limits this right by allowing each Member State to determine independently whether an EEIG formed by registration in its registry has full legal personality. These provisions leave open the possibility of different and inconsistent national rules regarding the legal status of the EEIG.⁴⁰

Article 2 of the Regulation points up the extreme care that should be used in selecting the state of the EEIG's official address. This article provides that, subject to the provisions of the Regulation itself, the law of the state of the official address is the law applicable to the contract and to the internal operation of the EEIG.⁴¹ Hence, important issues involving interpretation and performance of the contract and available remedies in the event of breach, as well as many of the issues surrounding the operation of the entity, must be resolved by the law of the state of official address. As a citizen of the state of official address, the EEIG will also be subject to all the other laws of that state, except as may be otherwise provided.⁴²

Despite the critical importance of this matter, members of the EEIG do not have complete freedom to decide the site of the official address. Article 12 narrows the possible number of states by providing that the official address, as stated in the contract, must be in either the state in which the EEIG will have its central administration or the state in

40. One explanation for this curious provision in article 1(3) is the incidence of taxes. In some Member States, such as Italy and Germany, entities with legal personality pay taxes, as do their members. Israel, *supra* note 21, at 17. The EEIG is structured so that only the members pay taxes. See *infra* note 79 and accompanying text. Consequently, Member States with legal personality taxes should decide that the EEIG does not have legal personality. To do otherwise would make their national regulation inconsistent with the paramount Regulation. Presumably other Member States could confer full legal personality on the EEIG.

41. Article 2(1) excepts matters relating to the status or capacity of natural persons and the capacity of legal persons from this choice of law provision. *Regulation, supra* note 3, art. 2(1). Presumably these issues would be resolved by the law of the state of the person's nationality, or its *siege*.

42. Among the important matters involved in the operation of the entity that are left to the national law are the fiduciary duty and level of care owed by the manager, insolvency, and liquidation, as well as relevant accounting rules. See, e.g., *id.* arts. 36, 35(2); Israel, *supra* note 21, at 21 n.55.

The hierarchy of law applicable to the EEIG is as follows: (1) the Regulation; (2) the terms of the contract among the members; (3) EC law, and the national law of the state of official address. Obviously the validity and enforcement of the contract provisions referred to in (2) are subject to (3), and the Regulation makes this explicit. *Id.* art. 2(1). Among the other national laws applicable to the EEIG are the labor and social laws, competition laws, and intellectual property laws. *Id.* preamble, para. 19.

which one of the members has its central administration, so long as the EEIG will also carry on some activity there.⁴³

The Regulation sets forth the documents that, in addition to the contract, must be filed in the registry of the state of official address. These documents are public records and serve as notice to parties doing business with the EEIG.⁴⁴

To assure the flexibility of the entity and encourage its use, there are no special capital requirements as a condition to the formation or operation of the EEIG.⁴⁵ The members may provide financing necessary for the EEIG's operations either as "contributions to equity" or as loans. Members can make all types of contributions to the entity, including cash, contributions in kind, or services. It is also possible to make no contributions to the entity.⁴⁶ Loans by third parties appear to be allowed as well.⁴⁷ Public investment in the enterprise is not allowed.⁴⁸

Article 16(1) of the Regulation requires two organs within the EEIG—the members acting collectively and the manager; these two organs are responsible for the entity's decision-making and management.⁴⁹

43. Article 13 allows the transfer of the official address to another state meeting the criteria of article 12. *Id.* art. 13.

44. *Id.* arts. 7, 8, 9. In addition to the contract, the following documents and notices must be filed in the registry: (a) any amendment to the contract, including any change in membership; (b) notice of setting up or closing down any establishment of the EEIG; (c) any judicial decision declaring the EEIG a nullity; (d) notice of the appointment or termination of the appointment of a manager, including the names and any other identification particularly required by the law of the state of registration; (e) notice of assignment of participation; (f) decisions of the membership or judiciary regarding winding up; (g) notice of the appointment and the termination of appointment of a liquidator; (h) notice of conclusion of liquidation; (i) any proposal to change the state of official address; (j) any clause exempting new members from liability for preadmission debts. *Id.* art. 7.

45. *See* Israel, *supra* note 21, at 18.

46. *Introduction, supra* note 18, at 8.

47. *See* Israel, *supra* note 21, at 19 n.37. Such loans are not specifically provided for, nor are they prohibited, see, however, *infra* note 84 and accompanying text regarding security interests. A lender could not, however, by virtue of the loan investment, become a member of the EEIG, thereby obtaining a voice in the EEIG's management to protect its investment. Article 4, which lists the persons eligible for membership, would not preclude membership by an otherwise qualified person whose only interest in the venture is to protect its investment. Article 3, regarding the EEIG's purpose, states that the EEIG is to facilitate the economic activities of its members, and its activity must be related to those of the members. Thus, a passive investor whose interest is protection of its investment would not qualify as a member. *Regulation, supra* note 3, arts. 3, 4.

48. *Id.* art. 23.

49. *Id.* art. 16(1). Other organs can be established and their roles stated in the contract. *Id.* art. 16(1).

The members acting as a body are the ultimate decision-making body; they have plenary power to make any decision directed toward achieving the EEIG's purposes.⁵⁰

Each member must have at least one vote for decision-making purposes.⁵¹ The contract may give some members more votes, but no member may have a majority of the votes.⁵² Since the EEIG is intended to function on the basis of consensus among the members, the Regulation provides that all measures require unanimous assent, unless otherwise stated in the contract.⁵³ The contract can provide that certain measures can be adopted with less than unanimous approval. For any such measures the contract can set forth quorum provisions and establish the number or percentage of votes necessary for adoption.⁵⁴ Certain measures, regardless of the contract, can be adopted only by unanimous decision. These include: alteration of the purpose of the EEIG; alteration of the allocation of votes or the number necessary for adoption of measures; alteration of the EEIG's duration; alteration of the members' contribution to the EEIG's financing; and changes to the contract.⁵⁵

The Regulation does not require periodic meetings of the members. But the manager of the EEIG must arrange for members to be consulted regarding a matter whenever so requested by a member. The manager can also arrange for consultation on the manager's own initiative.⁵⁶ The manager can thereby protect itself from later charges of overstepping its authority. Each member is entitled to obtain information from the manager regarding the business and to inspect the EEIG's books and

50. *Id.* art. 16(2). This power is subject to the terms of the contract, which in turn may be modified by the members. *Id.* arts. 17(3), (2)(g).

51. *Id.* art. 17(1). *See also supra* note 50.

52. *Regulation, supra* note 3, art. 17(1).

53. The Regulation awkwardly and backhandedly states the presumption of unanimity using "unless otherwise provided in the contract" language. At first reading article 17 gives the impression that majority voting is presumed except for specified matters. Article 17(1) states that each member has one vote, except that the contract can assign certain members more than one vote, but less than a majority of the votes. Article 17(2) lists measures requiring unanimous vote, regardless of the contract. Article 17(3) states that, except where unanimity is required, the contract may set quorum and voting majority rules. It is only in the last sentence of article 17(3) that the majority voting presumption shifts. That sentence states that unless otherwise provided in the contract, all decisions shall be unanimous. *Id.* art. 17(3).

54. *Id.* art. 17(3).

55. *Id.* art. 17(2). These last two unanimity requirements actually may be altered by contract so long as the first unanimity requirements remain inviolate. *Id.* art. 17(2)(f), (g).

56. *Id.* art. 17(4).

records.⁵⁷

The business of the EEIG is to be managed by the manager. The Regulation invests this person with extremely broad powers to the exclusion of the members. Only the manager may represent the EEIG in dealings with third parties.⁵⁸ The manager's acts are binding on the EEIG and its members even if they are outside the EEIG's purposes.⁵⁹ The contract, or a unanimous decision of the members, determines the terms of the appointment and removal of the manager and sets forth the manager's powers.⁶⁰

Since the manager's acts, even those outside the EEIG's stated purposes, are binding on the members, the articulation of the manager's authority in the contract or by unanimous decision is to a large extent effective only internally. It is an allocation of responsibility between the manager and the members, having limited effect on third parties.⁶¹ From the perspective and for the benefit of third parties dealing with the manager, the authority of the manager is plenary and virtually unlimited.

This situation encourages third parties to deal with the manager. Third parties need not be concerned about who has authority to act on behalf of the EEIG, nor must they investigate the manager's authority. Only when the manager and the members show that the third party knew or could not have been unaware of the manager's lack of authority can the EEIG and its members escape responsibility for the acts of the manager beyond the manager's powers.⁶² This very narrow ultra vires rule parallels that applicable to directors of limited liability companies as set forth in the Council's First Directive.⁶³ Publication of the contract or the unanimous decision of the members setting forth the ambit of the manager's authority is not in itself sufficient proof of such knowledge.⁶⁴ Hence, although the publication of the contract is for the benefit of third

57. *Id.* art. 18.

58. *Id.* art. 20(1).

59. *Id.*

60. *Id.* art. 19(3).

61. Such a recitation of the manager's authority is extremely important as between the managers and the members. It may supplement the law of the state of official address on some important matters such as mismanagement and fiduciary duty. *See infra* note 66 and accompanying text.

62. *Regulation, supra* note 3, art. 20.

63. *First Council Directive of March 9, 1968, on Coordination of Safeguards, Which, for the Protection of the Interests of Members and Others, Member States Require of Companies Within the Meaning of Article 58 of the EEC Treaty, with a View to Making Such Safeguards Equivalent Throughout the Community*, 11 O.J. EUR. COMM. (No. L 68) 11 (1968).

64. *Regulation, supra* note 3, art. 20(1).

parties, they are not charged with knowledge of it. Moreover, the EEIG or its members may not rely upon express limitations on the manager's powers, whether in the published contract or as a published decision of the members, to defeat the claims of third parties absent the third party's knowledge of such decision of contract.⁶⁵

The Regulation contains no provision regarding the relationship between the members of the EEIG and the manager, or the manager's accountability, other than the provision allowing a statement of the manager's powers in the contract. Hence the law of the state of official address will govern all questions of responsibility for ultra vires acts, mismanagement, or breach of duty.⁶⁶ But members presumably could place provisions regarding these matters in the contract.

Any natural person may be a manager unless the national authorities have that person from serving in the administrative or management body of a company.⁶⁷ Member States may allow legal persons to act as managers so long as a natural person represents the legal person.⁶⁸ There is no prohibition on the manager's being an employee of or being otherwise affiliated with one of the members. One of the members itself could be a manager.

Members of the EEIG have unlimited joint and several liability for the EEIG's debts and other liabilities. As stated in the Regulation, the members are liable for the EEIG's "debts and other liabilities of whatever nature."⁶⁹ The origin or type of liability is hence irrelevant.

Before a third party can proceed against a member to enforce an obligation of the EEIG, the third party must make demand for payment on the EEIG, and the obligation must remain unsatisfied for an appropriate time.⁷⁰ The Regulation rather blandly and unsatisfactorily expands on

65. *Id.*

66. Article 32(2) of the Regulation provides that on application of a member a court may order the EEIG's winding up "on just and proper grounds." *Id.* art. 32(2). This provision gives rise to the possibility that a member could seek liquidation of the EEIG if grievances or liabilities among the members, or between the members and the manager, were not satisfactorily resolved. It may also give the court some supervisory authority over the EEIG.

67. *Id.* art. 19(1). This bar may arise under the law applicable to the individual, the law of the state in which the EEIG has its official address, or a judicial or administrative decision within, or recognized in, any Member State.

68. *Id.* art. 19(2). This is a change from the laws of most Member States, which allow only natural persons to be managers or directors. Israel, *supra* note 21, at 18.

69. *Regulation, supra* note 3, art. 24(1).

70. *Id.* art. 24(2). This provision envisions simply a demand made and unmet for a reasonable period. It does not imply that the members are liable only after formal judicial proceedings in which a judgment has been obtained and remains unsatisfied. Israel,

this liability provision by stating that “[n]ational law shall determine the consequences of such [joint and several] liability.”⁷¹ Unfortunately, the Regulation gives no guidance as to which national law governs this significant point. Article 2 states that “[s]ubject to the provisions of this Regulation, the law applicable . . . to the contract . . . [and] to the internal organization . . .” of the EEIG shall be the law of the state of official address.⁷² The procedural and substantive issues surrounding enforcement of a member’s joint and several liability to a third party, however, involve neither the contract nor the EEIG’s internal organization and hence have little to do with the state of official address. Moreover, by juxtaposing the statement in article 24(1) that national law determines the consequences of joint and several liability with the introductory phrase in article 2(1), “[s]ubject to the provisions of this Regulation . . . ,”⁷³ one can argue that national law other than that of the state of official address should be applied. By article 2(1), the national law of the state of official address applies. There would be no need to restate in article 24(1) that national law applies if the national law intended were that of the state of official address. The explicit statement in article 24(1) that national law governs is meaningful only if it is the national law of a state other than the state of official address.⁷⁴ The most likely other choices are the law of the state of the place of the debt or of the *siege* of the member against which enforcement is sought.⁷⁵ A contract between the EEIG and the third party, however, can limit a member’s potential

supra note 21, at 19.

71. *Regulation*, *supra* note 3, art. 24(1).

72. *Id.* art. 2(1).

73. *Id.*

74. Moreover, if that were the drafters’ intent, it would have been easy enough in article 24(1) to state that the applicable national law was to be that of the state of official address.

75. An example of the differing ambit of joint and several responsibility, depending on the law applied, is the question of specific performance. By article 24(1), the member’s obligation extends to all of the EEIG’s obligations of whatever nature. *Id.* art. 24(1). Suppose that an EEIG defaulted on a contract to provide services to a third party, and the third party sought to enforce the obligation against a member. The Regulation deals with the matter of specific performance ambiguously. The provision in article 24(1) that the member is liable for debts and liabilities of “whatever nature” supports the conclusion that the services must be provided. But, article 24(2) states that before a third party can proceed against a member “for *payment* in respect of debts and other liabilities . . . ,” *id.* art. 24(2) (emphasis added), demand must be made on the EEIG and remain unsatisfied. One could infer from this clause that the member is liable only for damages (payment), not for performance. Given this ambiguity in the Regulation, national law will answer the question. The national laws regarding the availability of specific performance may vary among the Member States. *See Israel*, *supra* note 21, at 19.

liability to a third party.⁷⁶

In turn, the law of the state of the official address would arguably govern any right of contribution the paying member might have against the other members. This is a matter surrounding the internal organization of the entity, the rights of the members vis-a-vis one another. These rights and obligations could also be regulated by provisions in the contract.

Profits from the EEIG's activities are deemed to be profits of the members, and shall be apportioned to them according to the contract, or equally if the contract does not contain a profit sharing provision.⁷⁷ Likewise, the members are liable for the EEIG's losses according to the contract, or equally if the contract does not otherwise specify.⁷⁸

The EEIG is merely a "pass through" entity for tax purposes. It pays no taxes; only its members recognize its profits and losses for tax purposes.⁷⁹ The distribution provisions of the Regulation state that profits and losses shall be apportioned as provided in the contract, or equally if no contract provision exists.⁸⁰ It does not require that profits in fact be distributed annually or regularly. It is thus possible that profits will be deemed distributed for tax purposes, although in fact they are not. The taxing authority will be that of the member, not that of the state of official address.⁸¹

Any member may assign its participation in the EEIG to any other member or to a third party with the unanimous consent of the other members.⁸² The assignee does not thereby become a member of the EEIG for liability or management purposes.⁸³ Separate from an assignment, a member may grant a security interest in its participation with the unanimous consent of the members, unless the contract otherwise

76. *Regulation, supra* note 3, preamble, para. 14. Such a contract provision makes the remaining members' potential liability more real; it also raises issues of the fairness of such a clause to the remaining members and of the manager's duty to the members.

77. *Id.* art. 21(1).

78. *Id.* art. 21(2).

79. *Id.* art. 40.

80. *Id.* art. 21(1).

81. *See id.* preamble, para. 18.

82. *Id.* art. 22(1). The term "participation" as used in article 22 is not defined. It probably means only the right to share profits and perhaps losses, rather than decision-making. Article 22(1) provides that a "member . . . may assign his participation in the . . . [EEIG] or a proportion thereof. . . ." *Id.* art. 22 (emphasis added). This phrase seems to limit participation to the financial return; the decision-making function cannot be divided.

83. *Id.*

provides.⁸⁴ The holder of a security interest may not become a member of the EEIG by reason of the security interest.⁸⁵ This is consistent with the notion that there be no passive investor members in the EEIG.⁸⁶

New members can gain admission to the EEIG with the unanimous consent of the members.⁸⁷ New members are generally liable for the liabilities of the EEIG on the same terms as the other members, even for liabilities incurred before admission.⁸⁸ The contract, or the terms of admission, may exempt the new member from pre-admission obligations.⁸⁹ Since the contract, including the exemption clause, is published in the registry in the state of official address, this clause will also be effective against third parties. The same is true if the exemption is contained in the published admission document.⁹⁰

IV. WITHDRAWAL FROM AND TERMINATION OF THE EEIG

The EEIG is more structured than a partnership in terms of withdrawal. Article 27(1) of the Regulation provides that a member may withdraw from the EEIG only according to the terms of the contract, or if there is no contractual provision, with the unanimous consent of the remaining members.⁹¹ The Regulation does not provide for withdrawal at will. But the Regulation apparently does not outlaw contract provisions allowing withdrawal on written notice to the other members. Absent a contract provision, however, the rigorous rule of unanimous consent applies.

Upon the withdrawal or cessation of a member, the manager must inform the remaining members of the withdrawal or cessation and file a notice of withdrawal or cessation in the registry of the state of official address.⁹² Such notice is extremely important for limitation of the former

84. Regulation, *supra* note 3, art. 22(2). Apparently, contract provisions either prohibiting the grant of security interests or allowing them with less than unanimous approval would be permitted.

85. *Id.*

86. *See supra* note 47, and accompanying text.

87. *Id.* art. 26(1).

88. *Id.* art. 26(2).

89. *Id.*

90. *Id.*

91. If a member ceases to meet the criteria for membership set forth in article 4(1), it ceases to be a member. Member States may provide that membership in the EEIG ceases as provided in their insolvency or liquidations laws. *Id.* art. 28(1). The consequences of cessation of membership under these rules is the same as for withdrawal with consent. *See, e.g., id.* arts. 33, 34.

92. *Id.* art. 29.

member's liability for obligations incurred subsequent to withdrawal. Curiously, the Regulation does not contain a provision for outgoing members comparable to that of article 26(2), which explicitly limits an incoming member's liability to third parties if notice of admission is published. Article 34 provides that a member ceasing to belong to the EEIG remains liable for debts and liabilities incurred before withdrawal or cessation on the terms of article 24. One can reasonably infer from this sentence that publication limits liability for obligations the EEIG incurs after withdrawal or cessation. Unfortunately, the article does not state this explicitly.

Also, unlike a partnership, the EEIG continues in existence after the withdrawal of a member, unless otherwise provided in the contract.⁹³

These two provisions regarding the consequences of withdrawal to the withdrawing member and to the entity are quite opposite from principles of partnership law. As between themselves, however, they are entirely consistent. If a member can withdraw only on the terms of the contract or with unanimous consent, it is likely that either in the contract or as companion to the decisions to allow withdrawal, the remaining members would have decided to continue the EEIG.

The winding up and liquidation procedures of the EEIG are a combination of specific EC rules set forth in the Regulation and national law.

Upon withdrawal the value of a member's rights and liabilities are determined on the basis of the EEIG's assets and liabilities as they exist at the date of withdrawal.⁹⁴ The value of a member's interest cannot be fixed in the contract or otherwise as of a date in advance of the date of withdrawal.⁹⁵

Winding up the EEIG can be voluntary, "quasi-voluntary," or court ordered. The members can voluntarily wind up either unanimously or as provided in the contract.⁹⁶ In addition, the Regulation requires that the members voluntarily decide to wind up upon the expiration of the EEIG's stated period of existence, the accomplishment of its purpose or the impossibility of its accomplishment, or when any other clause in the contract requires.⁹⁷ If the members do not make the decision to wind up within three months of the occurrence of any of these circumstances, any

93. *Id.* art. 30.

94. *Id.* art. 33. Presumably the EEIG's financial statements and records are to be maintained using the accounting conventions of the state of official address.

95. *Id.* art. 33.

96. *Id.* art. 31(1).

97. *Id.* art. 31(2)(a), (b).

member may petition the court to order winding up.⁹⁸ The membership must also decide to wind up when the cross-border character of membership ceases.⁹⁹

A court ordered winding up occurs when: the EEIG is acting outside the statutory purpose for which it was created; when the state of official address ceases to be the functional situs of the EEIG or of one of the members; or, when diversity among members no longer exists.¹⁰⁰ For any of these causes, a person concerned, including but not limited to a member or a competent public authority, may seek winding up.¹⁰¹ The Regulation does not state what court can order winding up in these instances, but it would probably be the appropriate court of the state of official address. The court must order winding up unless the facts or circumstances giving rise to the application are corrected before the court issues a substantive ruling.¹⁰² The Regulation also empowers a court to order winding up on application of a member "on just and proper grounds."¹⁰³ Such grounds are certain to vary among the Member States. In addition, the Regulation gives Member States the right to empower a court to order the winding up of an EEIG whose official address is within its territory whenever the EEIG acts against that state's public interest.¹⁰⁴

The winding up of an EEIG entails its liquidation.¹⁰⁵ The national law of the state of official address governs the liquidation,¹⁰⁶ but some specific rules in the Regulation supersede national law on this point. Specifically, the Regulation establishes a statutory period of limitation on post-liquidation liability. Article 37(2) substitutes a period of five years from the publication of notice of conclusion of liquidation for any longer period in national law as the time within which a member is susceptible to actions for debts or liabilities arising from the EEIG's activities. Apparently a national law limitation of less than five years would be valid.

EEIGs are subject to national law governing insolvency and cessation

98. *Id.* art. 31(2).

99. *Id.* art. 31(3).

100. *Id.* art. 32(1). *See supra* notes 31-33 and accompanying text.

101. *Id.* art. 32(1).

102. *Id.*

103. *Id.* art. 32(2).

104. *Id.* art. 32(3). This provision only applies if the national law confers such authority on its courts regarding companies and other legal persons.

105. *Id.* art. 35(1).

106. Article 35(2) states that liquidation shall be governed by national law. *Id.* art. 35(2). It does not state which national law. It is certainly, however, that of the state of official address.

of payments.¹⁰⁷ Again, the national law of the state of official address would apply. All questions of priorities and members' liability in the event of insolvency are left to the variety of Member State laws. One specific provision in the Regulation affords members some measure of protection. Commencement of insolvency provisions against the EEIG does not by itself cause the commencement of such proceedings against its members.¹⁰⁸

The Regulation is silent on the relation between the commencement of insolvency proceedings against the EEIG and its winding up. Insolvency is not one of the grounds for winding up stated in the Regulation. Under the Regulation, however, winding up entails liquidation,¹⁰⁹ and liquidation is governed by national law.¹¹⁰ National law regarding insolvency may require liquidation in the event of insolvency.¹¹¹ Insolvency thus may indirectly be an additional ground for winding up in some Member States.

V. CONCLUSION

Since the EEIG has become available only very recently, it is too early to assess its popularity.¹¹² France's experience with the similar GIE¹¹³ suggests that the EEIG will be widely used by small and medium-sized firms. The requirement of cross-border diversity in membership does make the EEIG less likely to be used for country-specific ventures. On the other hand, the EEIG is a device through which businesses can participate in cross-border transactions that EC legislation is encouraging. Moreover, European based subsidiaries and affiliates of United States corporations can participate in an EEIG subject to the now more liberal strictures of United States antitrust laws.¹¹⁴ Thus, the EEIG should

107. *Id.* art. 36.

108. *Id.*

109. *Id.* art. 35(1).

110. *Id.* art. 35(2).

111. *See, e.g.,* J. LE GALL, *supra* note 10, at 225-26.

112. Also, since there is no EC-wide registration for the EEIG, it will be a bit more difficult to obtain information regarding its use. Information will have to be obtained from 12 separate commercial registers.

113. *See supra* note 10.

114. *See supra* note 32. In particular the Foreign Trade Antitrust Improvements Act of 1982, Pub. L. No. 97-290, 49 Stat. 1246 (codified at 15 U.S.C §§ 1 (note), 6a, 45(a) (1989)). *See generally* *Antitrust Enforcement Guidelines for International Operations*, 4 Trade Reg. Rep. (CCH) ¶13,109 (Dept. of Justice 1988); Bruce & Peirce, *Understanding the Export Trading Company Act and Using (or Avoiding) Its Antitrust Exemptions*, 38 Bus. Law. 975 (1983); Murphy, *Moderating Antitrust Subject Matter*

prove a useful tool for business involvement in the EC.

APPENDIX

COUNCIL REGULATION (EEC) No 2137/85

of 25 July 1985

on the European Economic Interest Grouping (EEIG)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 235 thereof,

Having regard to the proposal from the Commission⁽¹⁾,

Having regard to the opinion of the European Parliament⁽²⁾,

Having regard to the opinion of the Economic and Social Committee⁽³⁾,

Whereas a harmonious development of economic activities and a continuous and balanced expansion throughout the Community depend on the establishment and smooth functioning of a common market offering conditions analogous to those of a national market; whereas to bring about this single market and to increase its unity a legal framework which facilitates the adaptation of their activities to the economic conditions of the Community should be created for natural persons, companies, firms and other legal bodies in particular; whereas to that end it is necessary that those natural persons, companies, firms and other legal bodies should be able to cooperate effectively across frontiers;

Whereas cooperation of this nature can encounter legal, fiscal or psychological

difficulties; whereas the creation of an appropriate Community legal instrument in the form of a European Economic Interest Grouping would contribute to the achievement of the above mentioned objectives and therefore proves necessary;

Whereas the Treaty does not provide the necessary powers for the creation of such a legal instrument;

Whereas a grouping's ability to adapt to economic conditions must be guaranteed by the considerable freedom for its members in their contractual relations and the internal organization of the grouping;

Whereas a grouping differs from a firm or company principally in its purpose, which is only to facilitate or develop the economic activities of its members to enable them to improve their own results; whereas, by reason of that ancillary nature, a grouping's activities must be related to the economic activities of its members but not replace them so that, to that extent, for example, a grouping may not itself, with regard to third parties, practise a profession, the concept of economic activities being interpreted in the widest sense;

Whereas access to grouping form must be made as widely available as possible to natural persons, companies, firms and other legal bodies, in keeping with the aims of this Regulation; whereas this Regulation shall not, however, prejudice the application at national level of legal rules and/or ethical codes concerning the conditions for the pursuit of business and professional activities;

(¹) OJ No C 14, 15., 2., 1974, p. 30 and OJ No C 103, 28., 4., 1978, p. 4.

(²) OJ No C 163, 11., 7., 1977, p. 17.

(³) OJ No C 108, 15., 5., 1975, p. 46.

Whereas this Regulation does not itself confer on any person the right to participate in a grouping, even where the conditions it lays down are fulfilled;

Whereas the power provided by this Regulation to prohibit or restrict participation in grouping on grounds of public interest is without prejudice to the laws of Member States which govern the pursuit of activities and which may provide further prohibitions or restrictions or otherwise control or supervise participation in a grouping by any natural person, company, firm or other legal body or any class of them;

Whereas, to enable a grouping to achieve its purpose, it should be endowed with legal capacity and provision should be made for it to be represented *vis-à-vis* third parties by an organ legally separate from its membership;

Whereas the protection of third parties requires widespread publicity; whereas the members of a grouping have unlimited joint and several liability for the grouping's debts and other liabilities, including those relating to tax or social security, without, however, that principle's affecting the freedom to exclude or restrict the liability of one or more of its members in respect of a particular debt or other liability by means of a specific contract between the grouping and a third party;

Whereas matters relating to the status or capacity of natural persons and to the capacity of legal persons are governed by national law;

Whereas the grounds for winding up which are peculiar to the grouping should be specific while referring to national law for its liquidation and the conclusion thereof;

Whereas groupings are subject to national laws relating to insolvency and cessation of payments; whereas such laws may provide other grounds for the winding up of groupings;

Whereas this Regulation provides that the profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members; whereas it is understood that otherwise national tax laws apply, particularly as regards the apportionment of profits, tax procedures and any obligations imposed by national tax law;

Whereas in matters not covered by this Regulation the laws of the Member States and Community law are applicable, for example with regard to:

- social and labour laws,
- competition law,
- intellectual property law;

Whereas the activities of groupings are subject to the provisions of Member States' laws on the pursuit and supervision of activities; whereas in the event of abuse or circumvention of the laws of a Member State by a grouping or its members that Member State may impose appropriate sanctions;

Whereas the Member States are free to apply or to adopt any laws, regulations or administrative measures which do not conflict with the scope or objectives of this Regulation;

Whereas this Regulation must enter into force immediately in its entirety; whereas the implementation of some provisions must nevertheless be deferred in order to allow the Member States first to set up the necessary machinery for the registration of groupings in their territories and the disclosure of certain matters relating to groupings; whereas, with effect from

the date of implementation of this Regulation, groupings set up may operate without territorial restrictions,

HAS ADOPTED THIS
REGULATION:

Article 1

1. European Economic Interest Groupings shall be formed upon the terms, in the manner and with the effects laid down in this Regulation.

Accordingly, parties intending to form a grouping must conclude a contract and have the registration provided for in Article 6 carried out.

2. A grouping so formed shall, from the date of its registration as provided for in Article 6, have the capacity, in its own name, to have rights and obligations of all kinds, to make contracts or accomplish other legal acts, and to sue and be sued.

3. The Member States shall determine whether or not groupings registered at their registries, pursuant to Article 6, have legal personality.

Article 2

1. Subject to the provisions of this Regulation, the law applicable, on the one hand, to the contract for the formation of a grouping, except as regards matters relating to the status or capacity of natural persons and to the capacity of legal persons and, on the other hand, to the internal organization of a grouping shall be the internal law of the State in which the official address is situated, as laid down in the contract for the formation of the grouping.

2. Where a State comprises several territorial units, each of which has its own rules of law applicable to the matters referred to in paragraph 1, each territorial unit shall be considered as a State for the purposes of identifying the law applicable under this Article.

Article 3

1. The purpose of a grouping shall be to facilitate or develop the economic activities of its members and to improve or increase the results of those activities; its purpose is not to make profits for itself. Its activity shall be related to the economic activities of its members and must not be more than ancillary to those activities.

2. Consequently, a grouping may not:

- (a) exercise, directly or indirectly, a power of management or supervision over its members' own activities or over the activities of another undertaking, in particular in the fields of personnel, finance and investment;
- (b) directly or indirectly, on any basis whatsoever, hold shares of any kind in a member undertaking; the holding of shares in another undertaking shall be possible only in so far as it is necessary for the achievement of the grouping's objects and if it is done on its members' behalf;
- (c) employ more than 500 persons;
- (d) be used by a company to make a loan to a director of a company, or any person connected with him, when the making of such loans is restricted or controlled under the Member States' laws governing companies. Nor must a grouping be used for the transfer of any property between a company and a director, or any person connected with him, except to the extent allowed by the Members States' laws

governing companies. For the purposes of this provision the making of a loan includes entering into any transaction or arrangement of similar effect, and property includes moveable and immoveable property;

- (e) be a member of another European Economic Interest Grouping.

Article 4

1. Only the following may be members of a grouping:

- (a) companies or firms within the meaning of the second paragraph of Article 58 of the Treaty and other legal bodies governed by public or private law, which have been formed in accordance with the law of a Member State and which have their registered or statutory office and central administration in the Community; where, under the law of a Member State, a company, firm or other legal body is not obliged to have a registered or statutory office, it shall be sufficient for such a company, firm or other legal body to have its central administration in the Community;
- (b) natural persons who carry on any industrial, commercial, craft or agricultural activity or who provide professional or other services in the Community.

2. A grouping must comprise at least:

- (a) two companies, firms or other legal bodies, within the meaning of paragraph 1, which have their central administrations in different Member States, or
- (b) two natural persons, within the meaning of paragraph 1, who carry on their principal activities in different Member States, or

- (c) a company, firm or other legal body within the meaning of paragraph 1 and a natural person, of which the first has its central administration in one Member State and the second carries on his principal activity in another Member State.

3. A Member State may provide that groupings registered at its registries in accordance with Article 6 may have no more than 20 members. For this purpose, that Member State may provide that, in accordance with its laws, each member of a legal body formed under its laws, other than a registered company, shall be treated as a separate member of a grouping.

4. Any Member State may, on grounds of that State's public interest, prohibit or restrict participation in groupings by certain classes of natural persons, companies, firms, or other legal bodies.

Article 5

A contract for the formation of a grouping shall include at least:

- (a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already form part of the name;
- (b) the official address of the grouping;
- (c) the objects for which the grouping is formed;
- (d) the name, business name, legal form, permanent address or registered office, and the number and place of registration, if any, of each member of the grouping;
- (e) the duration of the grouping, except where this is indefinite.

Article 6

A grouping shall be registered in the State in which it has its official address, at the registry designated pursuant to Article 39 (1).

Article 7

A contract for the formation of a grouping shall be filed at the registry referred to in Article 6.

The following documents and particulars must also be filed at that registry:

- (a) any amendment to the contract for the formation of a grouping, including any change in the composition of a grouping;
- (b) notice of the setting up or closure of any establishment of the grouping;
- (c) any judicial decision establishing or declaring the nullity of a grouping, in accordance with Article 15;
- (d) notice of the appointment of the manager or managers of a grouping, their names and any other identification particulars required by the law of the Member State in which the register is kept, notification that they may act alone or must act jointly, and the termination of any manager's appointment;
- (e) notice of a member's assignment of his participation in a grouping or a proportion thereof, in accordance with Article 22 (1);
- (f) any decision by members ordering or establishing the winding up of a grouping, in accordance with Article 31, or any judicial decision ordering such winding up, in accordance with Articles 31 or 32;
- (g) notice of the appointment of the liquidator or liquidators of a grouping, as referred to in Article 35, their names and any other identification particu-

lars required by the law of the Member State in which the register is kept, and the termination of any liquidator's appointment;

- (h) notice of the conclusion of a grouping's liquidation, as referred to in Article 35 (2);
- (i) any proposal to transfer the official address, as referred to in Article 14 (1);
- (j) any clause exempting a new member from the payment of debts and other liabilities which originated prior to his admission, in accordance with Article 26 (2).

Article 8

The following must be published, as laid down in Article 39, in the gazette referred to in paragraph 1 of that Article:

- (a) the particulars which must be included in the contract for the formation of a grouping, pursuant to Article 5, and any amendments thereto;
- (b) the number, date and place of registration as well as notice of the termination of that registration;
- (c) the documents and particulars referred to in Article 7 (b) to (j).

The particulars referred to in (a) and (b) must be published in full. The documents and particulars referred to in (c) may be published either in full or in extract form or by means of a reference to their filing at the registry, in accordance with the national legislation applicable.

Article 9

1. The documents and particulars which must be published pursuant to this Regulation may be relied on by a grouping as against third parties under the conditions laid down by the national law applicable pursuant to Article 3 (5) and (7) of

Council Directive 68/151/EEC of 9 March 1968 on coordination of safeguards which, for the protection of the interests of members and others, are required by Member States of companies with the meaning of the second paragraph of Article 58 of the Treaty, with a view to making such safeguards equivalent throughout the Community⁽¹⁾.

2. If activities have been carried on on behalf of a grouping before its registration in accordance with Article 6 and if the grouping does not, after its registration, assume the obligations arising out of such activities, the natural persons, companies, firms or other legal bodies which carried on those activities shall bear unlimited joint and several liability for them.

Article 10

Any grouping establishment situated in a Member State other than that in which the official address is situated shall be registered in that State. For the purpose of such registration, a grouping shall file, at the appropriate registry in that Member State, copies of the documents which must be filed at the registry of the Member State in which the official address is situated, together, if necessary, with a translation which conforms with the practice of the registry where the establishment is registered.

Article 11

Notice that a grouping has been formed or that the liquidation of a grouping has been concluded stating the number, date and place of registration and the date, place and title of publication, shall be given in the *Official Journal of the European Communities* after it has been published in the gazette referred to in Article 39 (1).

(1) OJ No L. 65, 14. 3. 1968, p. 8.

Article 12

The official address referred to in the contract for the formation of a grouping must be situated in the Community.

The official address must be fixed either:

- (a) where the grouping has its central administration, or
- (b) where one of the members of the grouping has its central administration or, in the case of a natural person, his principal activity, provided that the grouping carries on an activity there.

Article 13

The official address of a grouping may be transferred within the Community.

When such a transfer does not result in a change in the law applicable pursuant to Article 2, the decision to transfer shall be taken in accordance with the conditions laid down in the contract for the formation of the grouping.

Article 14

1. When the transfer of the official address results in a change in the law applicable pursuant to Article 2, a transfer proposal must be drawn up, filed and published in accordance with the conditions laid down in Articles 7 and 8.

No decision to transfer may be taken for two months after publication of the proposal. Any such decision must be taken by the members of the grouping unanimously. The transfer shall take effect on the date on which the grouping is registered, in accordance with Article 6, at the registry for the new official address. That registration may not be effected until evidence has been produced that the proposal to transfer the official address has been published.

2. The termination of a grouping's registration at the registry for its old official address may not be effected until evidence has been produced that the grouping has been registered at the registry for its new official address.

3. Upon publication of a grouping's new registration the new official address may be relied on as against third parties in accordance with the conditions referred to in Article 9(1); however, as long as the termination of the grouping's registration at the registry for the old official address has not been published, third parties may continue to rely on the old official address unless the grouping proves that such third parties were aware of the new official address.

4. The laws of a Member State may provide that, as regards groupings registered under Article 6 in that Member State, the transfer of an official address which would result in a change of the law applicable shall not take effect if, within the two-month period referred to in paragraph 1, a competent authority in that Member State opposes it. Such opposition may be based only on grounds of public interest. Review by a judicial authority must be possible.

Article 15

1. Where the law applicable to a grouping by virtue of Article 2 provides for the nullity of that grouping, such nullity must be established or declared by judicial decision. However, the court to which the matter is referred must, where it is possible for the affairs of the grouping to be put in order, allow time to permit that to be done.

2. The nullity of a grouping shall entail its liquidation in accordance with the conditions laid down in Article 35.

3. A decision establishing or declaring the nullity of a grouping may be relied on as against third parties in accordance with the conditions laid down in Article 9 (1).

Such a decision shall not of itself affect the validity of liabilities, owed by or to a grouping, which originated before it could be relied on as against third parties in accordance with the conditions laid down in the previous subparagraph.

Article 16

1. The organs of a grouping shall be the members acting collectively and the manager or managers.

A contract for the formation of a grouping may provide for other organs; if it does it shall determine their powers.

2. The members of a grouping, acting as a body, may take any decision for the purpose of achieving the objects of the grouping.

Article 17

1. Each member shall have one vote. The contract for the formation of a grouping may, however, give more than one vote to certain members, provided that no one member holds a majority of the votes.

2. A unanimous decision by the members shall be required to:

- (a) alter the objects of a grouping;
- (b) alter the number of votes allotted to each member;
- (c) alter the conditions for the taking of decisions;
- (d) extend the duration of a grouping beyond any period fixed in the contract for the formation of the grouping;
- (e) alter the contribution by every member or by some members to the grouping's financing;

- (f) alter any other obligation of a member, unless otherwise provided by the contract for the formation of the grouping;
- (g) make any alteration to the contract for the formation of the grouping not covered by this paragraph, unless otherwise provided by that contract.

3. Except where this Regulation provides that decisions must be taken unanimously, the contract for the formation of a grouping may prescribe the conditions for a quorum and for a majority, in accordance with which the decisions, or some of them, shall be taken. Unless otherwise provided for by the contract, decisions shall be taken unanimously.

4. On the initiative of a manager or at the request of a member, the manager or managers must arrange for the members to be consulted so that the latter can take a decision.

Article 18

Each member shall be entitled to obtain information from the manager or managers concerning the grouping's business and to inspect the grouping's books and business records.

Article 19

1. A grouping shall be managed by one or more natural persons appointed in the contract for the formation of the grouping or by decision of the members.

No person may be a manager of a grouping if:

- by virtue of the law applicable to him, or
- by virtue of the internal law of the State in which the grouping has its official address, or

- following a judicial or administrative decision made or recognized in a Member State

he may not belong to the administrative or management body of a company, may not manage an undertaking or may not act as manager of a European Economic Interest Grouping.

2. A Member State may, in the case of groupings registered at their registries pursuant to Article 6, provide that legal persons may be managers on condition that such legal persons designate one or more natural persons, whose particulars shall be the subject of the filing provisions of Article 7 (d) to represent them.

If a Member State exercises this option, it must provide that the representative or representatives shall be liable as if they were themselves managers of the groupings concerned.

The restrictions imposed in paragraph 1 shall also apply to those representatives.

3. The contract for the formation of a grouping or, failing that, a unanimous decision by the members shall determine the conditions for the appointment and removal of the manager or managers and shall lay down their powers.

Article 20

1. Only the manager or, where there are two or more, each of the managers shall represent a grouping in respect of dealings with third parties.

Each of the managers shall bind the grouping as regards third parties when he acts on behalf of the grouping, even where his acts do not fall within the objects of the grouping, unless the grouping proves that the third party knew or could not, under the circumstances, have been unaware that the act fell outside the ob-

jects of the grouping; publication of the particulars referred to in Article 5 (c) shall not of itself be proof thereof.

No limitation on the powers of the manager or managers, whether deriving from the contract for the formation of the grouping or from a decision by the members, may be relied on as against third parties even if it is published.

2. The contract for the formation of the grouping may provide that the grouping shall be validly bound only by two or more managers acting jointly. Such a clause may be relied on as against third parties in accordance with the conditions referred to in Article 9 (1) only if it is published in accordance with Article 8.

Article 21

1. The profits resulting from a grouping's activities shall be deemed to be the profits of the members and shall be apportioned among them in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

2. The members of a grouping shall continue to the payment of the amount by which expenditure exceeds income in the proportions laid down in the contract for the formation of the grouping or, in the absence of any such provision, in equal shares.

Article 22

1. Any member of a grouping may assign his participation in the grouping, or a proportion thereof, either to another member or to a third party; the assignment shall not take effect without the unanimous authorization of the other members.

2. A member of a grouping may use his participation in the grouping as security

only after the other members have given their unanimous authorization, unless otherwise laid down in the contract for the formation of the grouping. The holder of the security may not at any time become a member of the grouping by virtue of that security.

Article 23

No grouping may invite investment by the public.

Article 24

1. The members of a grouping shall have unlimited joint and several liability for its debts and other liabilities of whatever nature. National law shall determine the consequences of such liability.

2. Creditors may not proceed against a member for payment in respect of debts and other liabilities, in accordance with the conditions laid down in paragraph 1, before the liquidation of a grouping is concluded, unless they have first requested the grouping to pay and payment has not been made within an appropriate period.

Article 25

Letters, order forms and similar documents must indicate legibly:

- (a) the name of the grouping preceded or followed either by the words 'European Economic Interest Grouping' or by the initials 'EEIG', unless those words or initials already occur in the name;
- (b) the location of the registry referred to in Article 6, in which the grouping is registered, together with the number of the grouping's entry at the registry;
- (c) the grouping's official address;
- (d) where applicable, that the managers must act jointly;
- (e) where applicable, that the grouping is

in liquidation, pursuant to Articles 15, 31, 32 or 36.

Every establishment of a grouping, when registered in accordance with Article 10, must give the above particulars, together with those relating to its own registration, on the documents referred to in the first paragraph of this Article uttered by it.

Article 26

1. A decision to admit new members shall be taken unanimously by the members of the grouping.

2. Every new member shall be liable, in accordance with the conditions laid down in Article 24, for the grouping's debts and other liabilities, including those arising out of the grouping's activities before his admission.

He may, however, be exempted by a clause in the contract for the formation of the grouping or in the instrument of admission from the payment of debts and other liabilities which originated before his admission. Such a clause may be relied on as against third parties, under the conditions referred to in Article 9 (1), only if it is published in accordance with Article 8.

Article 27

1. A member of a grouping may withdraw in accordance with the conditions laid down in the contract for the formation of a grouping or, in the absence of such conditions, with the unanimous agreement of the other members.

Any member of a grouping may, in addition, withdraw on just and proper grounds.

2. Any member of a grouping may be expelled for the reasons listed in the contract for the formation of the grouping

and, in any case, if he seriously fails in his obligations or if he causes or threatens to cause serious disruption in the operation of the grouping.

Such expulsion may occur only by the decision of a court to which joint application has been made by a majority of the other members, unless otherwise provided by the contract for the formation of a grouping.

Article 28

1. A member of a grouping shall cease to belong to it on death or when he no longer complies with the conditions laid down in Article 4 (1).

In addition, a Member State may provide, for the purposes of its liquidation, winding up, insolvency or cessation of payments laws, that a member shall cease to be a member of any grouping at the moment determined by those laws.

2. In the event of the death of a natural person who is a member of a grouping, no person may become a member in his place except under the conditions laid down in the contract for the formation of the grouping or, failing that, with the unanimous agreement of the remaining members.

Article 29

As soon as a member ceases to belong to a grouping, the manager or managers must inform the other members of that fact; they must also take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 30

Except where the contract for the formation of a grouping provides otherwise and without prejudice to the rights acquired by a person under Articles 22 (1) or 28 (2), a grouping shall continue to exist for

the remaining members after a member has ceased to belong to it, in accordance with the conditions laid down in the contract for the formation of the grouping or determined by unanimous decision of the members in question.

Article 31

1. A grouping may be wound up by a decision of its members ordering its winding up. Such a decision shall be taken unanimously, unless otherwise laid down in the contract for the formation of the grouping.

2. A grouping must be wound up by a decision of its members:

- (a) noting the expiry of the period fixed in the contract for the formation of the grouping or the existence of any other cause for winding up provided for in the contract, or
- (b) noting the accomplishment of the grouping's purpose or the impossibility of pursuing it further.

Where, three months after one of the situations referred to in the first subparagraph has occurred, a members' decision establishing the winding up of the grouping has not been taken, any member may petition the court to order winding up.

3. A grouping must also be wound up by a decision of its members or of the remaining member when the conditions laid down in Article 4 (2) are no longer fulfilled.

4. After a grouping has been wound up by decision of its members, the manager or managers must take the steps required as listed in Articles 7 and 8. In addition, any person concerned may take those steps.

Article 32

1. On application by any person concerned or by a competent authority, in the event of the infringement of Articles 3, 12 or 31 (3), the court must order a grouping to be wound up, unless its affairs can be and are put in order before the court has delivered a substantive ruling.

2. On applications by a member, the court may order a grouping to be wound up on just and proper grounds.

3. A Member State may provide that the court may, on application by a competent authority, order the winding up of a grouping which has its official address in the State to which that authority belongs, wherever the grouping acts in contravention of that State's public interest, if the law of that State provides for such a possibility in respect of registered companies or other legal bodies subject to it.

Article 33

When a member ceases to belong to a grouping for any reason other than the assignment of his rights in accordance with the conditions laid down in Article 22 (1), the value of his rights and obligations shall be determined taking into account the assets and liabilities of the grouping as they stand when he ceases to belong to it.

The value of the rights and obligations of a departing member may not be fixed in advance.

Article 34

Without prejudice to Article 37 (1), any member who ceases to belong to a grouping shall remain answerable, in accordance with the conditions laid down in Article 24, for the debts and other liabilities arising out of the grouping's activities before he ceased to be a member.

Article 35

1. The winding up of a grouping shall entail its liquidation.
2. The liquidation of a grouping and the conclusion of its liquidation shall be governed by national law.
3. A grouping shall retain its capacity, within the meaning of Article 1 (2), until its liquidation is concluded.
4. The liquidator or liquidators shall take the steps required as listed in Articles 7 and 8.

Article 36

Groupings shall be subject to national laws governing insolvency and cessation of payments. The commencement of proceedings against a grouping on grounds of its insolvency or cessation of payments shall not by itself cause the commencement of such proceedings against its members.

Article 37

1. A period of limitation of five years after the publication, pursuant to Article 8, of notice of a member's ceasing to belong to a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against that member in connection with debts and other liabilities arising out of the grouping's activities before he ceased to be a member.
2. A period of limitation of five years after the publication, pursuant to Article 8, of notice of the conclusion of the liquidation of a grouping shall be substituted for any longer period which may be laid down by the relevant national law for actions against a member of the grouping in connection with debts and other liabilities arising out of the grouping's activities.

Article 38

Where a grouping carries on any activity in a Member State in contravention of that State's public interest, a competent authority of that State may prohibit that activity. Review of that competent authority's decision by a judicial authority shall be possible.

Article 39

1. The Member States shall designate the registry or registries responsible for effecting the registration referred to in Articles 6 and 10 and shall lay down the rules governing registration. They shall prescribe the conditions under which the documents referred to in Articles 7 and 10 shall be filed. They shall ensure that the documents and particulars referred to in Article 8 are published in the appropriate official gazette of the Member State in which the grouping has its official address, and may prescribe the manner of publication of the documents and particulars referred to in Article 8 (c).

The Member States shall also ensure that anyone may, at the appropriate registry pursuant to Article 6 or, where appropriate, Article 10, inspect the documents referred to in Article 7 and obtain, even by post, full or partial copies thereof.

The Member States may provide for the payment of fees in connection with the operations referred to in the preceding subparagraphs; those fees may not, however, exceed the administrative cost thereof.

2. The Member States shall ensure that the information to be published in the *Official Journal of the European Communities* pursuant to Article 11 is forwarded to the Office for Official Publications of the European Communities within one month of its publication in the official gazette referred to in paragraph 1.

3. The Member States shall provide for appropriate penalties in the event of failure to comply with the provisions of Articles 7, 8 and 10 on disclosure and in the event of failure to comply with Article 25.

Article 40

The profits or losses resulting from the activities of a grouping shall be taxable only in the hands of its members.

Article 41

1. The Member States shall take the measures required by virtue of Article 39 before 1 July 1989. They shall immediately communicate them to the Commission.

2. For information purposes, the Member States shall inform the Commission of the classes of natural persons, companies, firms and other legal bodies which they prohibit from participating in groupings pursuant to Article 4 (4). The Commission shall inform the other Member States.

Article 42

1. Upon the adoption of this Regulation, a Contact Committee shall be set up under the auspices of the Commission. Its

function shall be:

- (a) to facilitate, without prejudice to Articles 169 and 170 of the Treaty, application of this Regulation through regular consultation dealing in particular with practical problems arising in connection with its application;
- (b) to advise the Commission, if necessary, on additions or amendments to this Regulation.

2. The Contact Committee shall be composed of representatives of the Member States and representatives of the Commission. The chairman shall be a representative of the Commission. The Commission shall provide the secretariat.

3. The Contact Committee shall be convened by its chairman either on his own initiative or at the request of one of its members.

Article 43

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 July 1989, with the exception of Articles 39, 41 and 42 which shall apply as from the entry into force of the Regulation.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

